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6 Attorney for Petitioner  
JAY STEWART MILLER

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

12 JAY STEWART MILLER, ) NO. CIV S-00-0757 LKK GGH P  
13 Petitioner, )  
14 v. ) **STIPULATION AND ORDER EXTENDING**  
15 CAL TERHUNE, et al., ) **DEADLINE FOR PETITIONER'S CLOSING**  
16 Respondents. ) **POST-HEARING BRIEF AND PERMITTING**  
17 ) **SUPPLEMENTAL LETTER BRIEF BY**  
 ) **RESPONDENTS**

18 Petitioner, JAY STEWART MILLER, and respondents, CAL TERHUNE,  
19 et al., by and through their respective counsel, hereby agree and  
20 stipulate as follows:

21               1. Respondent's post-hearing brief was filed on April 28,  
22 2005. Following filing of petitioner's closing post-hearing brief, the  
23 case will be submitted for decision.

24           2. As noted in respondent's brief, the California Supreme  
25 Court is currently considering two cases which present the question  
26 whether, and to what extent, evidence of mental illness and/or  
27 intoxication may support the subjective element of imperfect self-  
28 defense. *People v. Wright*, No. S119067; *People v. Gregory*, No.

1 S110450. Although disposition of these cases will not directly govern  
2 disposition of petitioner's ineffective assistance of counsel claim,  
3 they may bear on the analysis. The parties agree that supplemental  
4 briefing on the impact, if any, of Wright and Gregory will be  
5 appropriate in any case. Both cases have been fully briefed and argued  
6 in state court, and currently await disposition.

7       3. The parties therefore agree that the deadline for  
8 petitioner's closing post-hearing brief should be extended until after  
9 the California Supreme Court decides Wright and Gregory. Respondent  
10 should thereafter be permitted to submit a letter brief limited to the  
11 applicability, if any, of those decisions.

12       4. The following schedule is proposed: Petitioner's closing  
13 post-hearing brief shall be filed thirty days after the California  
14 Supreme Court files its opinion(s) in Wright and Gregory. If the state  
15 cases are decided on different days, petitioner shall file his closing  
16 post-hearing brief thirty days after the later-decided opinion is  
17 filed. Respondents may file a letter brief, limited to the  
18 applicability of Wright and Gregory, fourteen days after petitioner  
19 files his closing post-hearing brief.

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5. Counsel for respondent has authorized counsel for petitioner to sign this stipulation on his behalf.

Dated: April 29, 2005

Respectfully submitted,

QUIN DENVER  
Federal Defender

/s/ Allison Claire  
ALLISON CLAIRE  
Assistant Federal Defender  
Attorney for Petitioner  
JAY STEWART MILLER

Dated: April 29, 2005

BILL LOCKYER  
Attorney General of the State of  
California

/s/ Clifford E. Zall  
CLIFFORD E. ZALL  
Deputy Attorney General  
Attorney for Respondents

## ORDER

Pursuant to the stipulation of the parties and for good cause shown, petitioner's closing post-hearing brief shall be filed within thirty days after the California Supreme Court files its opinions in both People v. Wright, No. S119067, and People v. Gregory, No. S110450. Respondent may file a letter brief addressing the applicability, if any, of Wright and Gregory, within 14 days after the filing of petitioner's closing post-hearing brief. The case will then be submitted for preparation of Findings and Recommendations.

IT IS SO ORDERED.

DATED: 5/4/05

/s/ Gregory G. Hollows

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HON. GREGORY G. HOLLOWSS  
United States Magistrate Judge